

Analysis of Beding Debt Agreement Regarding the Guarantee of Land Certificates Without the Encumbrance of Dependent Rights (Study of The Indonesian Supreme Court Decision Number 1416 K/Pdt/2020)

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ABSTRACT

Debt agreements are agreements that are principal in nature, and it can be followed by an *accecoir* or additional agreement which is a guarantee agreement. Land is one of the many objects that can be guaranteed, and is also commonly guaranteed by using dependent rights that is regulated in *Undang-Undang Hak Tanggungan* (UUHT for short). Based on the contents of this thesis, there are a few problems, the first being whether land certificates can be objects for guarantee without dependent rights in a debt agreement, and the second being the legal certainty of land certificates being a guaranteed object in a debt agreement. The research type is normative with supporting research data which are interviews with a practitioner and an academic. The Judge's consideration in this case that says that there is a practice of *beding* ownership in this case sprouts out a lot of questions. The execution, legal position, creditor, and law protection is different between the guarantee of land with a dependent right and with not, with the encumbrance of a dependent right having more benefits.

Keywords: *Legal Certainty, Debt Agreements, Land Certificates Without Dependent Rights*

1. INTRODUCTION

Indonesia is a country that has a legal system, which means that the Indonesian people socialize and can carry out any activities that have been regulated by applicable law. The law governing individual interests is civil law or private law. According to Subekti, civil law in a broad sense includes all material private law, namely all basic laws that regulate individual interests.[1]

Human actions can be divided into legal acts and non-legal acts. According to R. Soeroso, a legal act is every human act that is done intentionally to give rise to rights and obligations. [2] R. Soeroso also explained that for a legal action to take place, it must be accompanied by a statement of will. The statement of will becomes a limitation for the existence/occurrence of legal actions. From these limitations, it can be said that the action which the result is not desired by the person involved is not a legal act, even though the result is regulated by legal regulations. [3]

Legal actions consist of unilateral legal actions and two-party legal actions. One of the legal actions of two parties is an agreement, such as a sale and purchase agreement, a lease agreement and so on. The agreement is regulated in

the third book of the Civil Code (KUHPer) concerning engagement in Article 1313 which explains that an agreement or an agreement is an act in which one or more people bind themselves to one or more other people. According to Subekti, an agreement is an event where one person promises to another person or where two people promise each other to carry out a certain thing. [4]

A loan agreement is one type of agreement. The debt-receivable agreement is regulated in article 1754 of the Civil Code which explains that the lease-to-use agreement is an agreement, which stipulates that the first party submits a number of goods that can be used up to the second party on the condition that the second party will return similar goods to the first party in an amount and amount. same situation.

In the debt agreement agreement which is the main agreement, there are usually additional agreements or *accessoir* agreements. Guarantees are something given by a debtor to a creditor to create confidence that the debtor will fulfill obligations that can be valued in money arising from an engagement. Guarantees are regulated in article 1131 of the Civil Code which explains that all movable and immovable property belonging to the debtor, both existing

and upcoming, becomes a guarantee for the debtor's individual engagements.

As we know land is one of the objects that can be pledged as guarantee for objects that are included as immovable objects. Land guarantees are carried out with dependent rights which according to the Law of the Republic of Indonesia Number 4 of 1996 concerning Dependent Rights on Land and Objects Related to Land (UUHT) Article 1 is a security right imposed on land rights as referred to in the Act Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or not including other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors.

In making an agreement, debts are not required to be followed by an *accessoir*/additional agreement such as a guarantee agreement. According to Frieda Husni Hasbullah, the nature of the *accessoir* means that the guarantee agreement is an additional agreement that depends on the main agreement. [5] The debt agreement is a principal agreement, and can be followed by an additional guarantee agreement, which if the guarantee agreement is deleted, not necessarily the debt agreement is deleted, and if the debt agreement is deleted, then it is definitely the guarantee agreement delete.

UUHT emphasizes that mortgage rights are the only guarantee rights to land, but in practice it is still found that land is guaranteed only with a title certificate. In the Supreme Court Decision Number 1416 K/PDT/2020, it was found that in the debt agreement, the debtor pledged land that was certified as property rights on behalf of the debtor to the creditor without any dependent rights. Creditors and debtors have also made a power of attorney to sell when making the debt agreement, because the debtor cannot pay off the debt on time, the creditor immediately sells the guarantee without going through a general auction process. The creditor sells the guaranteed object on the basis of a power of attorney to sell which was agreed on at the beginning. The sale and purchase transaction has been carried out between the creditor and the buyer of the land, but the debtor does not accept and does not want to leave the area which is the land which is the object of the guarantee, so the land buyer sues the creditor and also the debtor. After taking the court to the level of cassation, it was determined that the creditor and debtor had engaged in the practice of *beding* ownership, which is prohibited by law, and the deed of sale between the land buyer and creditor was null and void. Creditors and Debtors are determined to have a share ownership because of the power of attorney to sell if the debtor fails to pay the debt.

2. METHOD

The methods used in writing this proposal are as follows:

(1) Type of Research: The type of research in this legal research is normative or doctrinal legal research. [6] Doctrinal or normative research is research that provides a systematic explanation of the rules governing a category.

[7] (2) Nature of Research: the nature of legal research has a distinctive character, namely its prescriptive nature. As a descriptive science, jurisprudence studies the purpose of law, values of justice, validity of the rule of law, legal concepts, and legal norms. As an applied science, legal science establishes standard procedures, provisions, and signs in carrying out legal activities, (3). Data Source: (a) Primary Legal Material: Primary legal materials are materials used consisting of statutory regulations, official records, minutes of making legislation and judges' decisions. In this study the primary legal materials used are The Constitution of the Republic of Indonesia in 1945, the Book of Civil Law (KUHPER), Law of the Republic of Indonesia Number 4 of 1996 on Liabilities on Land and Objects Related to Land, Law of the Republic of Indonesia Number 5 1960 on the Basic Regulations of Agrarian Principles, (b) Secondary Legal Material: Secondary legal materials are defined as legal materials that provide an explanation of primary legal materials. In this case, it consists of laws, scientific books and research results, (c) Tertiary Law Material: Tertiary legal materials are materials that provide instructions or explanations for primary and secondary legal materials. In this study the tertiary legal materials used include dictionaries (laws), encyclopedias. (4). Data Analysis Techniques: The data analysis used in this study is qualitative data analysis techniques, namely the efforts made by collecting data, synthesizing, searching and finding important patterns. (5). Research Approach: In legal research, there are several approaches. With this approach, researchers will get information from various aspects regarding the issue that is being tried to find answers to. There are 2 (two): (a) statute approach: The statutory approach is an approach taken by reviewing all laws and regulations related to the legal issues being handled, (b). Case Approach: The case approach is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal force, namely: The Constitution of the Republic of Indonesia in 1945, the Book of Civil Law (KUHPER), Law of the Republic of Indonesia Number 4 of 1996 on Liabilities on Land and Objects Related to Land, Law of the Republic of Indonesia Number 5 1960 on the Basic Regulations of Agrarian Principles.

3. DISCUSSION

3.1. Issue

Based on the description of the background above, the problems in this study are: (1) Can land that has been certified become a guaranteed object without dependent rights in a debt agreement?, (2) How is the legal certainty of land that has been certified to be a guaranteed object in a debt agreement without the use of dependent rights?

3.2. Land as a Guaranteed Object in a Debt Agreement

One of the jurisprudence that is owned by Indonesia on land security can be seen in the District Court Decision Number 179/Pdt.G/2018/PN. Mtr, Decision Number 116/Pdt/2019/PT.MTR and Supreme Court Decision Number 1416/K/Pdt/2020. In the District Court Decision Number 179/Pdt.G/2018/PN.Mtr, in this decision there are two parties, namely Eddy Yusuf as the plaintiff who is domiciled on Jln. Banda Gg. Sinar Harapan Number 15 Cr. Ujung, Ampenan, Mataram City who gave power to I Ketut Sumertha, S.H. which is domiciled at Jalan Raya Sandubaya Number 20A Bertais, Sandubaya sub-district, Matara City, based on a special power of attorney. Then, there is another party, namely Baiq Maslah, who lives on Jln. Rajawali Number 6 BTN Selagalas, Kel. Selagalas, Cakranegara District, Mataram City, which was later named as Defendant 1. Lilyana S. Wijaya who resides at Jalan Ahmad Yani Riverside Block A Number 25 Sweta Timur, RW 167, Mayura Village, Cakranegara District, Mataram City, which was later referred to as Defendant 2 On Friday, October 13, 2017 the plaintiff and defendant 2 carried out a legal action, namely the plaintiff made a sale and purchase transaction for a plot of land located in Selagalas in accordance with the Sale and Purchase Deed No. 77/2017 in front of the Land Deed Making Officer (PPAT) Masyuda Nur' Ahsan, SH, MH whose address is in the city of Mataram. However, it was found that the land sold by Defendant 2 was owned by Defendant 1, which Defendant 2 sold based on power of attorney No. 16 dated October 31, 2016 made before a notary Masyuda Nur'Ahsan SH, MH, then Defendant 2 acts as the owner of the power of attorney from and therefore, for and on behalf of Defendant 1 and in the certificate of title No.701/Selagalas is on behalf of Defendant 1 and until now, the land is still occupied and controlled by Defendant 1 and the Plaintiff has also made a subpoena to Defendant 1 but Defendant 1 does not want to settle this amicably, and the land which is certified by property rights No. 701 has transferred its rights holder to the plaintiff (Eddy Yusuf) based on the deed of sale and purchase No. 77/2017, but until now it is still occupied by Defendant 1.

The object of the dispute, which in this case is a plot of land in the yard, has previously been lent or used as an object of borrowing and borrowing collateral by submitting a certificate of title No. 701/Selagalas which is on behalf of Defendant 1 with the amount of Rp. 831,250,000 (eight hundred thirty one million two hundred and fifty thousand rupiah) by Defendant 1 to Defendant 2 in accordance with the acknowledgment of debt with collateral No. 15 made in the presence of Masyuda Nur'Ahsan, S.H., M.H. as a notary in Mataram. But at one time, Defendant 1 was unable to pay the debt he borrowed with the guarantee of the certificate of ownership, which in Article 4 in the agreement letter they had made it was written that if at any time the Defendant 1 was unable to pay the debt at the time of payment. the due date is February 8, 2017, then Defendant 2 has the right to sell the land.

From the description above, there is an unlawful act committed by Defendant 1 because he has placed the object of dispute without any rights and does not want to hand it over, so the plaintiff is harmed both materially and immaterially. The material loss is in the amount of Rp. 75,000,000 (seventy five million rupiah) and in the amount of Rp. 50,000,000 (fifty million rupiah). Defendant 1 is willing to carry out the contents of the decision in this case voluntarily, properly and with legal origin, Defendant 1 is ordered to pay forced money (dwangsoom) of Rp. 1,000,000 (one million rupiah) every day for his delay in carrying out the decision as of the time this decision has legal force. permanent. For the sake of legal certainty regarding this decision, the object of the dispute occupied by Defendant 1 is a land and building located on Jln. Rajawali No. 6 BTN Selagalas, Kel. Selagalas, Kec. Cakranegara, Mataram City to be placed for confiscation of collateral, and with the existence of authentic evidence in the form of certificate of ownership No. 701/Selagalas and deed of sale and purchase No. 77/2017, therefore, this decision must be rendered an immediate decision that can be implemented in advance even though there are legal remedies for verzet, appeal, cassation or resistance So that this decision punishes the defendant to pay the cost of the case and/or the noble judges have a different opinion.

In Decision Number 116/Pdt/2019/PT.MTR, the Judge accepted the appeal filed by the original Appellant Plaintiff of the Convention / Defendant of the Convention, namely canceling the decision of the Class IA Mataram District Court on April 9, 2019 Number 179/Pdt.G/2018/PN.Mtr . for which the appeal is being filed and partially grant the Plaintiff/Appellant's claim; Declare the law of the Sale and Purchase Deed Number 77/2017 which was made before the Land Deed Making Officer (PPAT): Masyhuda Nur 'Ahsan, S.H., M.H. in Mataram it is legal; Stating the law of the Certificate of Ownership Number 701/Selagalas which now the right holder is the Plaintiff/Comparator is legal according to law; To state that the legal action taken by Defendant I/Appellate I who occupies the object of the dispute without any rights and refuses to submit it to the Plaintiff/Appellate is an act against the law; To punish Defendant I / Defendant I or anyone who has the right from him to submit the object of dispute to the Plaintiff / Appeler because the object of dispute has been certified as property rights Number 701/Selagalas and the current right holder is the Plaintiff / Appeal is rejecting the claim of the Plaintiff / Appellant other than and the rest.

In the Supreme Court Decision no. 1416/K/Pdt/2020, the Judge partially granted the Plaintiff's claim in the Convention/Defendant I in the Concession; Stating that the legal relationship between the Counterclaim Plaintiff/ Conventional Defendant I and the Conventional Defendant Reconvention Defendant II is a debt receivable in the amount of Rp.400,000,000.00 (four hundred million rupiah) with an interest expense of 1% a year as of October 2016 with the guarantee of Certificate of Ownership Number 701 / Selagalas, dated 18 June 1996 GS dated 6 June 1996 Number 672/1996 with an area of 515 m2; Sentencing the Plaintiff in the Convention/Defendant in the Convention to pay an amount of Rp. 400,000,000.00 (four hundred million

rupiah) plus an interest of 1% a year from October 2016 until this decision has permanent legal force to Lilyana S Wijaya/ Defendant of Reconvension/ Defendant II Convention; Reject the Plaintiff's claim in the Convention for other than and the rest.

From the details of the case above, we can see that the debtor guaranteed his land only using a land certificate without dependent rights. However, in the Third Paragraph Number 5 General Elucidation of Law no. 4 of 1996 concerning dependent rights over land and objects related to land (UUHT) it is stated that " Dependent Rights are the only guarantee institution for land, and thus complete the unification of the National Land Law, which is one of the main objectives of the Law -The Basic Agrarian Law."

In fact of the guarantee of land with only a land certificate still exists and can be done, but there is a difference in the execution and the legal position of the creditor. The execution a guaranteed object with dependent rights is regulated in article 6 of UUHT that explain that if the debtor does a breach of contract, the one who holds the dependent rights has the right to sell the guaranteed object by his/her own power through a general auction while fulfilling his/her debt through the sale of the object

Without the dependent rights agreement, which is the guarantee of land only using the land certificate, the execution of the object if the debtor does a breach of contract will be hard, because it is not specifically regulated and so the execution of the guaranteed object will follow the contents regarding the debt agreement itself.

There are 3 types of creditors, which are a secured creditor, an unsecured creditor, and a separated creditor. The secured creditor has a special right, that is to be prioritized first instead of other creditors based on reasons that are legitimate by the law. The Separated creditor is a creditor that has rights over something guaranteed like mortgage, pawning, etc. The unsecured creditor does not have a right over a guaranteed object but has the right to bill the debtor based on the debt agreement.

A creditor in a guarantee agreement that uses dependent rights is considered a secured creditor that has a higher standing than that of an unsecured debtor, while a creditor that doesn't use dependent rights is considered an unsecured debtor.

3.3. *The Legal Certainty of the use of Land as a Guaranteed Object in a Debt Agreement*

Legal protection is divided into two types, namely preventive legal protection and repressive legal protection. Preventive legal protection is protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the aim of preventing a violation and providing signs or limitations in carrying out an obligation, while Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred. a violation is committed.

The term *beding* ownership is not yet known by most people and it may be that there are a lot of people trapped by this *beding* ownership. *Beding* Ownership is an agreement in which if a debtor isn't able to pay his/her debt or does a breach of contract, then the debtors guaranteed object immediately becomes the creditor's, even though the price of the guaranteed object is different than the value in that of the debt agreement. In the Supreme Court Decision no. 1416/K/Pdt/2020, the judge's consideration says that the creditor and debtor did the practice of *beding* ownership, that is actually regulated in Article 12 of UUHT that explains that agreements that give authority to the dependent rights holder to own the guaranteed object if the debtor does a breach of contract is considered null and void. Legal Protection to those who guarantee with dependent rights and without dependent rights are different, because debtors who use dependent rights are protected by UUHT, while debtors that don't use dependent rights are not. The creditor's legal standing is also different, without dependent rights, then the creditor is considered as an unsecured creditor, where he/she has the right to bill because of the agreement alone, hence the enforcement of law only depends on the Civil Code and the debt agreement itself.

The Legal Certainty of the guaranteed object which is land would then be unclear, because there is the decision in which that the judge's consideration of the creditor and debtor practicing the *beding* ownership, while the prohibition of *beding* ownership itself is regulated in Article 12 of UUHT. In this case, the debtor guaranteed his certificate of land ownership only without dependent rights, and supposedly does not receive any protection from *beding* ownership practice, because the lack of use of dependent rights.

4. CONCLUSION

A debt agreement is an agreement that is principal in nature and can be followed by an *accessoir* / additional agreement. The guarantee of land is commonly accompanied by that of dependent rights, but based of Article 4 of UUHT, that says land that can be guaranteed with dependent rights are only of those with ownership rights, business use rights, and building use rights, and by using dependent rights, then the creditor is considered a secured creditor which is prioritized and also the execution if the debtor does a breach of contract is clear and regulated in Article 6 of UUHT by a general auction.

The use of dependent rights doesn't mean that the guarantee of land can't be done without dependent rights, but there is a difference of the legal standing of the debtor, the execution of the guaranteed object, and protection of law. The unsecured debtor doesn't have an executorial right like the secured debtor and isn't regulated by UUHT and so must rely on then Civil Code and the Debt Agreement itself for law enforcement.

In the Supreme Court Decision no. 1416/K/Pdt/2020, the judge's consideration says that there is practice of *beding* ownership because the creditor and debtor has made a

power of attorney to sell if the debtor fails to pay his debt on time, and the creditor has the right to sell the land to fulfill her receivable accounts. That is an indication of *beding* ownership itself because the creditor selling the land immediately is the same as the creditor owning the guaranteed object if the debtor breaches the contract. *Beding* ownership is actually regulated in Article 12 of UUHT that states that agreements that give authority to the dependent rights holder to own the guaranteed object if the debtor does a breach of contract is considered null and void. The background of the case explains that the debtor does not use dependent rights, while the *beding* ownership is regulated in Article 12 of UUHT hence there is a uncertainty of law where the absence of dependent rights in this case is decided by the Supreme Court to be *beding* ownership, although the debt and guarantee agreement between the creditor and debtor is not supposed to be protected by UUHT.

It is time for UUHT to be revised. There needs to be an affirmation of Dependent Rights as the only guarantee mechanism of land for the sake of a land guarantee unification so that there are no differences in the position of creditors and misinterpretations in the execution of collateral objects. This revision will also resolve legal uncertainties in land guarantee, especially regarding execution, creditor position, and legal protection. If the dependent rights is the only way as stated in the general explanation number three, fifth paragraph, then in any agreement that can be followed by a guarantee agreement that uses land as guaranteed objects, it will always use the dependent rights, and there will be no difference in legal protection even though the object or in this case land is the same.

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